

## DEPARTMENT OF STATE REVENUE

### LETTER OF FINDINGS NUMBER 43-20030103 UNDERGROUND STORAGE TANK FEES FOR THE REPORTING PERIOD ENDING DECEMBER 17, 2001

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#### ISSUE

##### **I. Underground Storage Tank Fees--Liability Tax Administration—Protests--Timeliness**

Authority: IC 6-8.1-1-1, -1-6, -5-1(c), -6-3(a)(1) and (b) and -9-1 (2004); IC 13-23-12 (1998); *United States v. Brockamp*, 519 U.S. 347 (1997); 45 IAC 15-5-2(a) (2004)

The taxpayer protests the assessment of underground storage tank (UST) fees for the reporting period in issue. The Department on its own initiative raises the question of whether the taxpayer submitted his protest of that assessment in a timely manner.

#### STATEMENT OF FACTS

The taxpayer is an individual whom the Department assessed unpaid UST fees for the reporting period ending December 17, 2001, among other periods. The Department's records indicate that it mailed the taxpayer a Notice of Proposed Assessment (hereinafter Form AR-80) for the protested liability on October 23, 2002. The taxpayer mailed his protest letter by certified mail, return receipt requested, on February 5, 2003 (105 days after the mailing of the AR-80) as shown by the certification date on the envelope. The taxpayer states in that letter that he was not aware, nor had this Department ever told him, that fees were due on empty USTs. The letter further states in relevant part: "I am sorry that I didn't reply sooner because I just has [sic] a Pacemaker\Diffibulater [sic] installed and am recooperating [sic]." The Department has since issued a tax warrant against the taxpayer for this liability.

#### DISCUSSION

UST fees assessed pursuant to IC article 13-23 are included in the definition of "listed taxes" or "taxes" under IC 6-8.1-1-1. IC chapter 13-23-12 imposes the UST fee. The owner of a UST that is not closed before July 1 of any year must pay an annual registration fee to the Department for each such UST for that year. The Department collects the UST fee as agent for the Indiana Department of Environmental Management (IDEM). IC 13-23-12-4 requires the Department to collect the UST fee and deposit specified amounts of each such fee into the underground petroleum storage tank (UPST) trust fund and into the UPST excess liability trust fund

respectively created by IC chapters 13-23-6 and -7. IDEM may use the money in those funds for the purposes set out in IC 13-23-6-1 and -13-6 (as to the UPST trust fund), in IC 13-23-7-1 and -4 (as to the UPST excess liability trust fund), and the statutes to which each of those sections respectively refer.

The first sentence of IC 6-8.1-5-1(c) (2004) states: “The notice [of proposed assessment] shall state that the person has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest.” Title 45 IAC 15-5-2(a) (2004) states: “A taxpayer has sixty (60) days from the date the notice of additional tax assessment is mailed to protest the additional tax liability.” The deadline to file a protest is absolute; when the General Assembly enacted IC 6-8.1-5-1(c), it did not give the Department discretion to grant any extension of time of that deadline on grounds of illness, hardship or for any other reason. “Tax law, after all, is not normally characterized by case-specific exceptions reflecting individualized equities.” *United States v. Brockamp*, 519 U.S.347, 352 (1997).

However, a taxpayer that fails to protest, but still wants to contest the merits of any part of the assessment to the Department, may still do so. Such a taxpayer must first pay the assessment in full, including all accrued interest and any penalty, and file a claim for refund of that payment pursuant to IC 6-8.1-9-1 or any refund claim statute included in a particular listed tax law that conflicts with IC 6-8.1-9-1. *See* IC 6-8.1-1-6 (provision of a listed tax law relating to the imposing, collecting or administering of that tax controls over any conflicting provision of IC article 6-8.1). A taxpayer seeking to file a claim for refund of any listed taxes that are fees imposed by IC article 13 (Environment) must file the claim with this Department, not with IDEM.

IC 6-8.1-6-3(a)(1) and (b), read together, treat documents and writings sent to the Department by certified mail as being filed on the certification date, as authenticated by the United States Post Office. The taxpayer mailed his certified protest letter 105 days after the Department mailed the Form AR-80. The taxpayer’s protest is thus untimely. Even if that protest had been timely, however, the taxpayer’s ignorance or misunderstanding of the law would not have been a valid defense to the assessment. IC 13-23-12-1 does not condition liability for the UST fee on whether the UST in question is full or empty, but on whether the tank is open or closed.

The taxpayer therefore must pay the assessment and file a claim for refund if he wants to revive his right to administrative review of that assessment. The Department has not found any specific statute in IC 13-23 governing the procedure for filing a claim for refund of UST fees. IC 6-8.1-9-1 thus would govern the procedure for any claim for refund of those fees. The taxpayer must submit a copy of this Letter of Findings with any such claim he may file.

### **FINDING**

The taxpayer’s protest is denied.